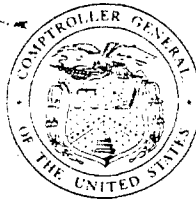


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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-197504

DATE: May 5, 1980

MATTER OF: Louis Fisher

DIGEST: In addition to fee reimbursed for his own attorney's legal services transferred employee was charged an attorney's fee by the lending institution which financed the purchase of new residence. Attorney's fees paid to a lending institution for legal services performed by an attorney retained by the lending institution who is not an employee of the lending institution may be reimbursed provided the fees are not for services considered to be finance charges, are customarily paid by the buyer in the locality and are otherwise reasonable.

The issue presented in this case is whether an employee may be reimbursed for attorney's fees charged by a lending institution on the purchase of a residence upon transfer of official station where he has been reimbursed for his own attorney's fee for legal services in connection with the same real estate transaction. The answer is yes, provided that the legal fees are not for services considered to be finance charges under section 106 of the Truth in Lending Act, are not for legal services performed by an employee of the lending institution, are customarily paid by the buyer in the locality and are otherwise reasonable.

Mr. Louis Fisher an employee of the Drug Enforcement Administration (DEA), purchased a residence in Pembroke Pines, Florida, upon his transfer from Washington, D.C., to Miami, Florida. His claim for reimbursement of purchase expenses included \$648 for attorney's fees charged by the lending institution and \$780 for his own attorney's fee for legal services in connection with the real estate transaction. The DEA disallowed the attorney's fees paid to the lending institution based upon the advice from the United States Department of Housing and Urban Development (HUD) that it is not customary for the borrower to pay the attorney's fees for the lending institution.

[Propriety of REIMBURSEMENT]

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Mr. Fisher submitted a supplemental claim for the \$648 paid to the lending institution for attorney's fees stating that he was advised by some of the lending institutions that it is customary for the borrower to pay the lending institution's attorney's fees in the South Florida area. The matter has been presented here upon a request for an advance decision by the Acting Chief, Accounting Section, Office of the Controller of the Drug Enforcement Administration.

We have obtained additional information from the HUD area office in Coral Gables, Florida, indicating that the information earlier obtained by DEA as to the custom with respect to payment of lender's attorney's fees in South Florida was inaccurate. We are advised that, in fact, it is customary for the borrower to pay this fee in South Florida. Thus, reimbursement for the fee is not precluded on the basis that it does not meet the requirement of para. 2-6.2c of the Federal Travel Regulations (FTR) (FPMR 101-7) (May 1973) that it be customarily paid by the purchaser in the locality of the employee's new official station. Nevertheless, the fee claimed by Mr. Fisher may not be reimbursed on the basis of the record presently before this Office.

Mr. Fisher has been reimbursed for the unitemized fee of \$780 paid to the attorney who he retained to represent his own interests in the purchase transaction. That payment is in accordance with our holding in 56 Comp. Gen. 561 (1977) that fees charged by the attorney retained by an employee for his own benefit may be reimbursed without itemization under FTR para. 2-6.2c.

We have recognized that an employee who has been reimbursed for his own attorney's fees may also be reimbursed for the fee paid for the services of an outside attorney retained by the lending institution incident to its financing of the purchase transaction, provided such fees are customarily paid by the purchaser in the locality and otherwise are reasonable in amount. Because FTR para. 2-6.2d precludes reimbursement for amounts that are finance charges under the Truth in Lending Act, Pub. L. 90-321, 82 Stat. 146, and Regulation Z, issued

thereunder, we have necessarily restricted reimbursement for attorney's fees assessed by a lending institution to those charges that are excluded from the finance charge. 58 Comp. Gen. 786 (1979). Also see Matter of Charles W. Smith, B-189381, December 15, 1977, and Matter of Anthony J. Vrana, B-189639, March 24, 1978. Although the decisions cited directly above involved lender's attorney's fees initially characterized as part of the loan origination fee, the Truth in Lending Act defines the finance charge as all charges (not for specifically excluded items) payable directly or indirectly by the borrower and imposed directly or indirectly by the lender as an incident to the extension of credit. Whether the lending institution's attorney's fee is included in an origination fee or whether it is separately stated on the closing document those fees are assessed incident to the extension of credit and are reimbursable only insofar as they are determined to be for specific charges excluded from the finance charge.

The \$648 fee paid by Mr. Fisher for the services of the lending institution's law firm was assessed as a fixed percentage of the principal amount of the loan. No explanation of the charge has been furnished by Mr. Fisher or by the lender. Thus not all of the services for which that fee was charged are shown to be of the type excluded from the finance charge under the following language of subsection 106(e) of the Truth in Lending Act:

"(e) The following items, when charged in connection with any extension of credit secured by an interest in real property, shall not be included in the computation of the finance charge with respect to that transaction:

"(1) Fees or premiums for title examination, title insurance, or similar purposes.

"(2) Fees for preparation of a deed, settlement statement, or other documents.

B-197504

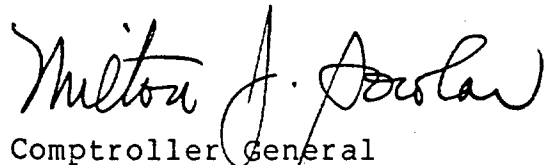
"(3) Escrows for future payments
of taxes and insurance.

"(4) Fees for notarizing deeds and
other documents.

"(5) Appraisal fees.

"(6) Credit reports."

In the absence of an itemization of the services performed and of the portion of the fee allocable to each, showing the part of that fee charged for allowable legal services under the language quoted above, Mr. Fisher may not be reimbursed for any part of the lump-sum fee of \$648 here in question.



For the Comptroller General
of the United States